# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 9810 of 2005**

**With**

**CIVIL APPLICATION No.4595 of 2005**

**With**

**SPECIAL CIVIL APPLICATION No. 10914 of 2005**

**to**

**SPECIAL CIVIL APPLICATION No. 11016 of 2005**

**With**

**SPECIAL CIVIL APPLICATION No. 11182 of 2005**

**With**

**SPECIAL CIVIL APPLICATION No. 11017 of 2005**

**to**

**SPECIAL CIVIL APPLICATION No. 11036 of 2005**

**For Approval and Signature:**

**THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS**
**THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA**

==========

| | |
|---|---|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

==========

**RAMILABEN CHANDULAL PATEL &128 - Petitioner(s)**

**Versus**

**STATE OF GUJARAT &6 - Respondent(s)**

==========

**Appearance :**

MR JAL SOLI UNWALA for Petitioner No(s).: 1,2,3,
4,5,6,7,8,9,10,11,12,
13,14,15,16,17,18,19,20,21,
22,23,24,25,26,27,28,29,30,
31,32,33,34,35,36,37,38,39,
40,41,42,43,44,45,46,47,48,
49,50,51,52,53,54,55,56,57,
58,59,60,61,62,63,64,65,66,
67,68,69,70,71,72,73,74,75,
76,77,78,79,80,81,82,83,84,
85,86,87,88,89,90,91,92,93,
94,95,96,97,98,99,100,101,102,
103,104,105,106,107,108,109,110,111,
112,113,114,115,116,117,118,119,120,
121,122,123,124,125,126,127,128.

MR H.L.JANI, Ld.AGP for Respondent No(s).: 1,2,4,5.
NOTICE SERVED BY DS for Respondent No(s).: 3.
MR RS SANJANWALA for Respondent No(s).: 3.
MR GIRISH D BHATT for Respondent No(s).: 6.

==========

**CORAM :THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS**

**THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA**

**Date : 16/06/2005**

**COMMON ORAL JUDGMENT**

**(Per : THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA)**

1. Rule. Mr.R.S.Sanjanwala, ld.Advocate for respondent no.3 and Mr.H.L.Jani, ld. Asst.Government Pleader for respondent nos.1, 2, 4 and 5 waive service of Rule. With consent of the parties, petitions are taken up for final disposal today.
2. In this group of petitions, as the common controversy arises, the same is now disposed of by this common order.
3. In these petitions a grievance is made that though notice under Sectoin 61 of the Bombay Land Revenue Code (Code for the short) has been issued and pursuant to the same hearing has been granted no adjudicating order has been passed by the concerned Authority i.e. Mamlatdar Pardi. It is also submitted that without passing such order , notice under Section 202 of the Code had already been issued by the said Mamlatdar calling upon the petitioners to vacate premises within 7 days, failing which the same would be demolished. Against the notice issued

under Section 202, the petitioners preferred appeal under Section 203 of the Code to the Collector, Valsad District, but the Collector by order dtd.18.05.2005 dismissed the appeal. Hence, the petitions.

4. Mr. H.L.Jani, learned A.G.P. makes statement on the instruction received from Mr.M.K.Date, Circle Inspector of Mamlatdar Office that the fact that despite issuance of notice under Section 61 of granting of hearing no order has been passed by the Mamlatdar, is true and it cannot be disputed by the respondent. When notice under Section 61 is already issued and the concerned persons are called upon to make representation to show cause as to why they should not be evicted from the land in question, it is not only desirable but necessary for the concerned authority to grant them proper hearing, and, thereafter, to pass a reasoned order and to communicate the same to such persons. When that has not been done it is difficult to envisage that a notice under Section 202 could be issued.
5. In our opinion, the order pursuant to the notice issued under Section 61 is required not only to be passed by the concerned authority, but it is also required to be duly communicated to the concerned persons. Since that has not been done herein , we direct the Mamlatdar Pardi to consider the representations that have been made by the petitioners before him pursuant to the notice issued under Section 61 of the Code, which is at ANNEXURE- N to the petition and pass a reasoned order and to communicate the same to the petitioners. Further, we also direct that if the order which may be made pursuant to the notice under Section 61 is against the petitioner, the same shall not be implemented for period of 2 weeks from the date of passing of the said order to enable the petitioners to take recourse for further remedy as provided under the Statute.
6. It is also made clear that the notices that have already been issued against the petitioners under Section 202 of the Code will no longer survive and so also the impugned orders dtd.18.05.2005 passed in appeals preferred under Section 203 of the Code, against the notices issued under Section 202 of the Code which is at ANNEXURE-P . Thus, the said order of respondent no.2 is required to be quashed and set aside and it is hereby ordered to be quashed and set aside.
7. In view of the aforesaid directions, present petition is partly allowed. Rule is made absloute to the aforesaid extent with no order as to costs. The Civil Application filed by the State does not survive.
8. The Registry is directed to place the copy of the order in all connected matters.

(KSHITIJ R. VYAS, J.)

(AKSHAY H.MEHTA,J.)

16.06.2005
amit